

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAMOND ROSS,

Defendant-Appellant.

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UNPUBLISHED  
February 28, 2006

No. 257074  
Wayne Circuit Court  
LC No. 04-003503-01

Before: Cooper, P.J., and Jansen and Markey, JJ.

MEMORANDUM.

Defendant was charged with armed robbery, MCL 750.529, felon in possession of a firearm, MCL 750.224f(2), and possession of a firearm during the commission of a felony, MCL 750.227b(1). Following a bench trial, defendant was convicted of armed robbery and acquitted of the weapons offenses. He appeals as of right. We affirm.

Defendant's sole claim on appeal is that the trial court impermissibly rendered an inconsistent verdict. We disagree.

Both felony-firearm and felon in possession of a firearm require proof that the defendant possessed a firearm. *People v Perkins*, 473 Mich 626, 636; 703 NW2d 448 (2005); *People v Mitchell*, 456 Mich 693, 698; 575 NW2d 283 (1998). Armed robbery, on the other hand, requires proof that the defendant was "armed with a dangerous weapon described in the statute." *People v Lee*, 243 Mich App 163, 168; 622 NW2d 71 (2000). The statute refers to "a dangerous weapon, or any article used or fashioned in a manner to lead the [victim] to reasonably believe it to be a dangerous weapon." MCL 750.529. This means that the defendant "must be armed with an article which is in fact a dangerous weapon—a gun, knife, bludgeon, etc., or some article harmless in itself, but used or fashioned in a manner to induce the reasonable belief that the article is a dangerous weapon." *People v Parker*, 417 Mich 556, 565; 339 NW2d 455 (1983).

The victim testified that defendant pointed what appeared to be the barrel of a gun at her and warned her to cooperate lest she be hurt or shot. Because the victim did not see the entire object, she could not be certain that it was in fact a real gun. This evidence was sufficient to prove that defendant possessed an object fashioned and used in a manner to induce a reasonable belief that he was armed with a dangerous weapon, *People v Jolly*, 442 Mich 458, 469; 502 NW2d 177 (1993), but not to prove that he in fact possessed an actual firearm. The trial court

did not err in convicting defendant of armed robbery predicated on possession of a feigned weapon while acquitting him of felony-firearm and felon in possession of a firearm.

Affirmed.

/s/ Jessica R. Cooper

/s/ Kathleen Jansen

/s/ Jane E. Markey